

PATENT
Customer No. 22,852
Attorney Docket No. 08959.0011-00000

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re U.S. Patent No. 7,399,587 B2)
Issue Date: July 15, 2008) Group Art Unit: 1634
Inventors: Daisuke TENMIZU et al.) Examiner: Jeanine Anne GOLDBERG
Application No.: 10/536,809) Conf. No. 4582
For: CANINE CYP1A2 GENETIC)
POLYMORPHISM)
)

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

DETERMINATION OF PATENT TERM ADJUSTMENT - POST GRANT

In accordance with 37 C.F.R. § 1.705(d), Patentee hereby applies for patent term adjustment under 35 U.S.C. § 154(b) of 153 days. This application is being filed with a Petition Under 37 C.F.R. § 1.183 requesting that the Commissioner waive the two month filing period set forth in 37 C.F.R. § 1.705(d) in light of a recent decision, rendered on September 30, 2008, by the U.S. District Court for the District of Columbia in *Wyeth v. Dudas*, No. 07-1492 (JR), 2008 U.S. Dist. LEXIS 76063 (D.D.C. Sept. 30, 2008). The required fee of \$200.00 for the request is enclosed.

U.S. Patent No. 7,399,587 currently indicates a patent term adjustment of 104 days on its cover. That determination was based on the following facts:

The above-identified application entered the U.S. national phase when the requirements of section 371 were fulfilled on May 27, 2005.

Customer No. 22,852
Attorney Docket No. 08959.0011-00000

The first notification under section 132 was mailed on January 17, 2007, resulting in a PTO delay of 174 days beyond the 14 months provided by 35 U.S.C. § 154(b)(1)(A).

A Final Office Action was mailed September 12, 2007. Patentee filed an Amendment in response to the Office Action on February 20, 2008, resulting in a delay charged to the Patentee of 70 days in excess of the three months permitted, pursuant to 35 U.S.C. § 154(b)(2).

As a result, the USPTO determined a patent term adjustment of 104 days (174 days of USPTO delay less 70 days of delay by Patentee).

Patentee now calculates a patent term adjustment of 153 days based on the following additional fact:

This application issued as U.S. Patent No. 7,399,587 on July 15, 2008, which is 49 days after the application had been pending for three years (the period from the third year anniversary date of the commencement of the national phase of May 27, 2008, until the date of issue on July 15, 2008). Under the USPTO's manner of calculating PTA, Patentee was not provided those additional 49 days of PTO delay.

In view of the decision of the Federal District Court for the District of Columbia in *Wyeth v. Dudas* on September 30, 2008, Patentee submits it is entitled to a total patent term adjustment of 153 days. The sum includes the USPTO delay of 104 days (net) within the initial three years of pendency and the USPTO delay of 49 days due to exceeding the three year pendency period, as described above, which was non-concurrent with the period encompassing the initial 104 days (net) of USPTO delay.

Customer No. 22,852
Attorney Docket No. 08959.0011-00000

Patentee respectfully requests that the current patent term adjustment be reconsidered.

This request is accompanied by the required fee of \$200.00 as set forth in 37 C.F.R. § 1.18(e). If there are any other fees due in connection with the filing of this Request for Determination, please charge such fees to Deposit Account No. 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.

Dated: January 9, 2009

By: 

David Albagli
Reg. No. 56,155